

Senate Bill 194

By: Senators Chance of the 16th, Rogers of the 21st, Seabaugh of the 28th and Staton of the 18th

AS PASSED

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia
2 Annotated, relating to state purchasing in general, so as to revise provisions relating to
3 benefits based funding projects in which payments to vendors depend upon the realization
4 of specified savings or revenue gains; to change provisions relating to such projects, their
5 required and permissible terms, and their funding; to provide for an advisory role by the
6 Georgia Environmental Facilities Authority; to change the membership of an oversight
7 committee; to amend Title 50 of the Official Code of Georgia Annotated, relating to state
8 government, so as to enact the "Guaranteed Energy Savings Performance Contracting Act";
9 to provide for definitions; to authorize state agencies to enter into guaranteed energy savings
10 performance contracts; to provide for contract provisions; to provide for funding for
11 contracts; to provide for review of capital improvement projects; to provide for statutory
12 construction; to provide for related matters; to provide for effective dates, contingencies, and
13 automatic repeal under certain circumstances; to repeal conflicting laws; and for other
14 purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 **SECTION 1.**

17 Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated,
18 relating to state purchasing in general, is amended by revising Code Section 50-5-77, relating
19 to benefits based funding projects, as follows:

20 "50-5-77.

21 (a) As used in this Code section, the term:

22 (1) 'Agency' means every state department, agency, board, bureau, and commission
23 including without limitation the Board of Regents of the University System of Georgia.

24 (2) 'Authority' means the Georgia Environmental Facilities Authority.

25 ~~(2)~~(3) 'Benefits based funding project' means any governmental improvement project in
26 which payments to vendors depend upon the realization of specified savings or revenue

gains attributable solely to the improvements, provided that each benefits based funding project is structured as follows:

(A) The vendor ~~promises, or accepts the condition,~~ guarantees that the improvements will generate actual and quantifiable savings or enhanced revenues;

(B) The agency develops a measurement tool for calculating the savings or enhanced revenues realized from the project; and

(C) The funding for the project shall be attributable solely to its successful implementation for the period specified in the contract, or, where applicable, from sums remitted by the vendor or surety to remedy a deficit in guaranteed savings or revenue gains.

~~(3)~~(4) 'External oversight committee' means a committee composed of the executive director of the Georgia Technology Authority, the commissioner of administrative services, the director of the Office of Planning and Budget, the state auditor, the state accounting officer, the Governor's designee, the chairperson of the House Committee on Appropriations, and the chairperson of the Senate ~~Finance~~ Committee on Appropriations.

~~(4)~~(5) 'Measurement tool' means the formula used to measure the actual savings or enhanced revenues and includes a means for distinguishing enhanced revenue or savings from normal activities, including the possibility of no savings or revenue growth or an increased expenditure or decline in revenue. Baseline parameters must be defined based on historical costs or revenues for a minimum of one year. The measurement tool shall use the baseline parameters to forecast savings or enhanced revenues and to determine the overall benefits and fiscal feasibility of the proposed project.

~~(5)~~(6) 'Special dedicated fund' means any fund established pursuant to this Code section from which the vendor or vendors are compensated as part of a benefits based funding project. The moneys in the special dedicated fund shall be deemed contractually obligated and shall not lapse at the end of each fiscal year.

(b) An agency shall be authorized to enter into multiyear lease, purchase, or lease purchase contracts of all kinds for the acquisition of equipment, goods, materials, ~~real or~~ personal property, improvements to real property, services, construction services, renovation services, and supplies as benefits based funding projects; provided, however, that a condition precedent to the award of the contract is a competitive solicitation in compliance with any applicable purchasing laws now or hereafter enacted, including without limitation the provisions of this chapter and Chapter 25 of this title; and provided, further, that the contract shall contain provisions for the following:

(1) The contract shall terminate absolutely and without further obligation on the part of the agency at the close of the fiscal year in which it was executed and at the close of each succeeding fiscal year for which it may be renewed;

~~(2) The contract shall terminate absolutely and without further obligation on the part of the agency at such time as the agency determines that actual savings or incremental revenue gains are not being generated to satisfy the obligations under the contract;~~

~~(3)~~(2) The contract may be renewed only by a positive action taken by the agency;

(3) In addition to any other remedies available to the agency, the contract shall provide that at such time as the agency determines that actual savings or incremental revenue gains are not being generated to satisfy the obligations under the contract, the vendor shall be required to remedy the deficit in actual savings or incremental revenue gains by remitting to the state an amount equal to the deficit. The vendor shall also be required to provide at contract execution and upon execution of any contract renewals an energy savings guarantee bond, a bank letter of credit, escrowed funds, a corporate guarantee from a corporation with an investment grade credit rating, or other surety instrument acceptable to the agency equal to the value of the project's annual savings or revenue gains;

(4) The contract shall state the total obligation of the agency for repayment for the fiscal year of execution and shall state the total obligation for repayment which will be incurred in each fiscal year renewal term, if renewed; and

(5) The term of the contract, including any renewal periods, may not ~~exceed~~ extend past the date that is ten years from the date of the completion of the project that is the subject of the contract, ~~and~~

~~(6) The agency's financial obligations under the contract are limited to and cannot exceed the savings or incremental revenue gains, as calculated using the measurement tool, actually generated by the benefits based funding project, even if no savings or enhanced revenues are realized from the project.~~

(c) Any contract developed under this Code section containing the provisions enumerated in subsection (b) of this Code section shall be deemed to obligate the agency only for those sums payable during the fiscal year of execution or, in the event of a renewal by the agency, for those sums payable in the individual fiscal year renewal term and only to the extent that savings or enhanced revenues are attributable to the benefits based funding project calculated using the measurement tool and, where applicable, sums remitted by the vendor or surety to remedy a deficit in guaranteed savings or revenue gains.

(d) No contract developed and executed pursuant to this Code section shall be deemed to create a debt of the state for the payment of any sum beyond the fiscal year of execution or, in the event of a renewal, beyond the fiscal year of such renewal.

(e) Any such contract may provide for the payment by the agency of interest or the allocation of a portion of the contract payment to interest, provided that the contract is in compliance with this Code section.

(f) During the term of the contract, including any renewal periods, the agency shall, using the measurement tool, periodically calculate the total amount of the savings or enhanced revenues attributable to the implementation of the benefits based funding project. To the extent that savings or enhanced revenues are realized, the agency shall transfer from its budget into the special dedicated fund an amount up to but not to exceed the amount owed on the contract for the then current fiscal year term's obligation to provide for payments, or, where applicable, sums remitted by the vendor or surety to remedy a deficit in guaranteed savings or revenue gains may be transferred to the special dedicated fund by the agency.

(g) During the term of the contract, including any renewal periods, the agency shall, using the measurement tool, calculate the total amount of the savings or enhanced revenues attributable to the implementation of the benefits based funding project during the then current fiscal year at least 30 days prior to the end of the then current fiscal year. If the agency renews the contract and to the extent that savings or enhanced revenues are realized in excess of the amount due on the contract in the then current fiscal year term, the agency shall transfer prior to the end of the then current fiscal year from its budget into the special dedicated fund an amount up to but not to exceed the next fiscal year's obligation to provide for future payments.

(h) Promptly upon nonrenewal, termination, or expiration of the contract, any moneys remaining in the special dedicated fund shall be deposited in the general fund of the state.

(i) Each agency is authorized to accept title to property subject to the benefits based funding contract and is authorized to transfer title back to the vendor in the event the contract is not fully consummated.

(j) Payments to which a vendor is entitled under the contract may not be assigned without the approval of the agency. In its discretion, the agency may agree that the vendor may assign the payments to which it is entitled under the benefits based funding contract to a third party, provided that the agency will be made party to the assignment agreement and that any such assignment agreement will not alter the obligations of the agency under the contract, specifically including, but not limited to, the provisions required by subsection (b) of this Code section; and provided that the vendor, at the time of the request that the agency agree to an assignment of payments, must provide to the agency an energy savings guarantee bond, a bank letter of credit, escrowed funds, a corporate guarantee from a corporation with an investment grade credit rating, or other surety instrument acceptable to the agency equal to the guaranteed savings for the total project duration including any anticipated renewal periods and the energy savings guarantee bond, bank letter of credit, escrowed funds, corporate guarantee from a corporation with an investment grade credit rating, or other surety instrument acceptable to the agency must remain in force for the

entire project duration including any renewal periods. As savings are realized and verified by the measurement tool during the term of the contract including renewal periods, the value of the energy savings guarantee bond, bank letter of credit, escrowed funds, corporate guarantee from a corporation with an investment grade credit rating, or other surety instrument acceptable to the agency may decrease proportionately.

~~(j)~~(k) The external oversight committee shall have the responsibility to ~~review and advise~~ direct the authority to perform reviews and to recommend approval of all benefits based funding projects advising:

(1) The overall feasibility of the benefits based funding project;

(2) The measurement tool;

(3) The projected savings or enhanced revenues; and

(4) The dollars to be set aside for vendor payments.

(l) At the recommendation of the authority, each ~~(k) Each~~ benefits based funding project and the proposed contract shall be approved by the external oversight committee prior to execution of the contract and prior to any renewal thereof shall be subject to further review by the authority or the external oversight committee at any time.

~~(h)~~(m) Each agency shall prepare and certify an annual report ~~to be sent to the external oversight committee, the Governor, and the General Assembly~~ on all contracts entered into pursuant to this Code section, describing the benefits based funding ~~project, its projects,~~ the progress of the projects, its the consolidated savings or enhanced revenues of such projects, and such other information as may be relevant. This annual report shall be sent to the authority on behalf of the external oversight committee at a date determined by the authority. The authority shall review and consolidate all agency reports and submit a consolidated report to the Governor, the General Assembly, and the external oversight committee."

SECTION 2.

Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended by adding a new chapter to read as follows:

"CHAPTER 37

50-37-1.

This chapter shall be known and may be cited as the 'Guaranteed Energy Savings Performance Contracting Act.'

50-37-2.

Unless otherwise provided, as used in this chapter, the term:

(1) 'Allowable costs' means equipment and project costs that:

(A) The governmental unit reasonably believes will be incurred during the term of the
guaranteed energy savings performance contract; and

(B) Are documented by industry engineering standards.

(2) 'Authority' means the Georgia Environmental Facilities Authority.

(3) 'Director' means the executive director of the Georgia Environmental Facilities
Authority.

(4) 'Energy conservation measure' means a program, or facility alteration, or technology
upgrade designed to reduce energy, water, waste-water, or other consumption or
operating costs. The term may include, without limitation:

(A) Insulation of the building structure or systems within the building;

(B) Storm windows or doors, caulking or weather stripping, multiglazed windows or
doors, heat absorbing or heat reflective glazed and coated window or door systems,
additional glazing, reductions in glass area, or other window and door system
modifications that reduce energy consumption;

(C) Automated or computerized energy control systems;

(D) Heating, ventilating, or air-conditioning system modifications or replacements;

(E) Replacement or modification of lighting fixtures to increase the energy efficiency
of the lighting system without increasing the overall illumination of a facility, unless
an increase in illumination is necessary to conform to applicable state or local building
codes for the lighting system after the proposed modifications are made;

(F) Energy recovery ventilation systems;

(G) A training program or facility alteration that reduces energy consumption or
reduces operating costs, including allowable costs, based on future reductions in costs
for contracted services;

(H) A facility alteration which includes expenditures that are required to properly
implement other energy conservation measures;

(I) A program to reduce energy costs through rate adjustments, load shifting to reduce
peak demand, or use of alternative suppliers as otherwise provided by law, such as, but
not limited to:

(i) Changes to more favorable rate schedules;

(ii) Negotiation of lower rates, where applicable; and

(iii) Auditing of energy service billing and meters;

(J) The installation of energy information and control systems that monitor consumption, redirect systems to optimal energy sources, and manage energy using equipment;

(K) Indoor air quality improvements;

(L) Daylighting systems;

(M) Renewable generation systems owned by the governmental unit, such as solar photovoltaic, solar thermal, wind, and other technologies as identified in the project, provided that all metered distribution and deliveries of electric energy are made by an electric supplier authorized under the 'Georgia Territorial Electric Service Act';

(N) Geothermal HVAC systems;

(O) Water and sewer conservation measures, including, without limitation, plumbing fixtures and infrastructure;

(P) Equipment upgrades that improve accuracy of billable revenue generating systems; and

(Q) Automated, electronic, or remotely controlled systems or measures that reduce direct and other operating costs.

(5) 'Guaranteed energy savings performance contract' means a contract between the governmental unit and a qualified energy service provider for evaluation, recommendation, and implementation of one or more energy conservation measures which shall include, at a minimum, the design and installation of equipment and, if applicable, operation and maintenance of any of the measures implemented, and guaranteed annual savings which must meet or exceed the total annual contract payments made by the governmental unit for such contract, including financing charges to be incurred by the governmental unit over the life of the contract.

(6) 'Governmental unit' means any officer, employee, authority, board, bureau, commission, department, agency, or institution of a government agency, including, but not limited to, any state agency, state-aided institution, or any county, city, district, municipal corporation, municipality, municipal authority, political subdivision, school district, educational institution, incorporated town, county institution district, other incorporated district, or other public instrumentality which has the authority to contract for the construction, reconstruction, alteration, or repair of any public building or other public work.

(7) 'Industry engineering standards' means:

(A) Life cycle costing;

(B) The R.S. Means-estimated costing method developed by the R.S. Means Company;

(C) Historical data;

(D) Manufacturer's data;

(E) American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) standards;

(F) International Performance Measurement and Verification Protocol; and

(G) Other applicable technical performance standards established by nationally recognized standards authorities.

(8) 'Investment grade energy audit' means a study by the qualified energy services provider selected for a particular guaranteed energy savings performance contract project which includes detailed descriptions of the improvements recommended for the project, the estimated costs of the improvements, and the utility and operation and maintenance cost savings projected to result from the recommended improvements. The investment grade energy audit shall also include a detailed economic analysis of the project's performance over the life of the contract term.

(9) 'Operational cost savings' means a measurable decrease in operation and maintenance costs that is a direct result of the implementation of one or more energy conservation measures. Such savings shall be calculated in comparison with an established baseline of operation and maintenance costs.

(10) 'Qualified energy services provider' means a person or business with a record of documented guaranteed energy savings performance contract projects that is experienced in the design, implementation, and installation of energy conservation measures; has the technical capabilities to verify that such measures generate guaranteed energy and operational cost savings or enhanced revenues; has the ability to secure or arrange the financing necessary to support energy savings guarantees; and is approved by the authority for inclusion on the prequalifications list.

(11) 'State agency' means every state agency, authority, board, bureau, commission, and department, including, without limitation, the Board of Regents of the University System of Georgia.

50-37-3.

(a) A governmental unit may enter into a guaranteed energy savings performance contract with a qualified provider in accordance with the provisions of this chapter or in accordance with another statutorily authorized procurement process.

(b) If in accordance with applicable law the award of a contract by a governmental unit requires action at a public meeting, a governmental unit may award a guaranteed energy savings performance contract at a public meeting, if it has provided public notice in the manner prescribed under applicable law relating to open meetings, and the notice shall include the names of the parties to the contract and the purpose of the contract. For governmental units that are not required to take actions on contracts at public meetings, the

governmental unit may award a guaranteed energy savings performance contract in accordance with the procedures adopted by the governmental unit and the requirements of all applicable laws.

(c) Selection of qualified energy services provider. The process of implementing guaranteed energy savings performance contracts for governmental units shall include:

(1) Prequalification of qualified energy services providers. The authority shall be authorized to assemble a list of prequalified energy services providers. The director shall attempt to use objective criteria in the selection process. The criteria for evaluation shall include the following factors to assess the capability of the qualified energy services provider in the areas of design, engineering, installation, maintenance, and repairs associated with guaranteed energy savings performance contracts; post-installation project monitoring, data collection, and verification of and reporting of savings; overall project experience and qualifications; management capability; ability to access long-term sources of project financing; experience with projects of similar size and scope; and other factors determined by the director to be relevant and appropriate and relate to the ability to perform the project. The prequalification term of the established list of qualified energy service providers shall be three years. The director shall again assemble a list of prequalified energy service providers every three years from the commencement of each prequalification term. A qualified energy services provider may be removed from the list upon a determination by the director that said provider fails to meet the criteria for continued inclusion; and

(2) Request for proposals. Before entering into a guaranteed energy savings performance contract under this chapter, a governmental unit may and a state agency shall issue a request for proposals from at least three qualified energy services providers on the prequalifications list prepared and maintained by the director. A governmental unit may thereafter award the guaranteed energy savings performance contract to the qualified energy services provider that best meets the needs of the governmental unit, which need not be the lowest cost provided. A preliminary technical proposal shall be prepared by the qualified energy services provider in response to the request for proposals. Factors to be included in selecting the most qualified energy services provider for award of the guaranteed energy savings performance contract shall include, but not be limited to, the comprehensiveness of the proposal, comprehensiveness of cost-saving measures, experience, quality of technical approach, overall benefits to the governmental unit, and other factors determined by the governmental unit to be relevant to the implementation of the project.

(d) The governmental unit shall select the qualified energy services provider that best meets the needs of the governmental unit in accordance with criteria established by the

governmental unit. For governmental units that are not required to take actions on contracts at public meetings, the governmental unit shall provide public notice of the award of the guaranteed energy savings performance contract within 30 days. The notice shall include the names of the parties to the contract and the purpose of the contract. For governmental units that are required to take actions on contracts at public meetings, the public notice shall be made at least ten days prior to the meeting. After reviewing the proposals pursuant to subsection (e) of this Code section, a governmental unit may enter into an investment grade energy audit agreement with the selected qualified energy services provider for the provision of the energy audit report described in subsection (e) of this Code section.

(e) Before executing the guaranteed energy savings performance contract, the qualified energy services provider shall provide the governmental unit with an energy audit report summarizing recommendations for energy conservation measures based on anticipated energy, operational water, or waste-water cost savings or revenue increases resulting from the energy conservation measures. The energy audit report shall include estimates of all costs of installation, maintenance, repairs, and debt service and estimates of the amounts by which energy or operating costs will be reduced.

(f) Notwithstanding any other provision of law governing the letting of public contracts, a governmental unit may enter into guaranteed energy savings performance contracts with each qualified energy services provider selected in accordance with the provisions of this chapter. The governmental unit may elect to implement the energy conservation measures in one or more phases with the selected qualified energy services provider.

50-37-4.

(a) A guaranteed energy savings performance contract may provide that all payments, except obligations on termination of the contract before its scheduled expiration, shall be made over a period of time. The contract shall require the energy performance contractor to provide to the governmental unit an annual reconciliation of the guaranteed energy cost savings. The energy performance contractor shall be liable for any annual savings shortfall which may occur. In the event that such reconciliation reveals an excess in annual energy cost savings, such excess savings shall not be used to cover potential energy cost savings shortages in subsequent contract years. The guaranteed energy savings performance contract shall be for a firm fixed price. The governmental unit may require the qualified energy services provider to provide a payment and performance bond relating to the installation of energy conservation measures in the amount equal to 100 percent of the guaranteed energy savings performance contract.

(b) A guaranteed energy savings performance contract shall include a written guarantee that energy, water, waste-water, or operating cost savings or revenue increases will meet or exceed the cost of the energy conservation measures to be evaluated, recommended, designed, implemented, or installed under the contract within a 20 year period from the date of final acceptance of installation or implementation. Calculation of the energy, water, waste-water, or operating cost savings or revenue increases may take into account rebates, grants, incentives, or similar payments available under published programs which are reasonably anticipated to be received by the governmental unit as a direct result of the work performed by the qualified energy services provider even though such payments are not included in the qualified energy services provider's contractual guarantee. Escalations and other financial considerations assumed in savings calculations shall be defined in the contract if they are included in the savings calculations and are required to meet the payback criteria and life cycle analysis. Performance guarantees with stipulated savings that have been measured in accordance with the International Performance Measurement and Verification Protocol or other recognized and documented industry engineering standard are allowable and shall be explicitly stated in the contract.

(c) A governmental unit may enter into a third-party installment payment or lease purchase agreement to finance the costs associated with the guaranteed energy savings performance contract and any related hazardous materials abatement. The installment payment or lease purchase agreement may provide for payments over a period of time not to exceed 20 years.

(d) An improvement that is not causally connected to an energy conservation measure may be included in a guaranteed energy savings performance contract if:

(1) The total value of the improvement does not exceed 15 percent of the total value of the guaranteed energy savings performance contract; and

(2) Either:

(A) The improvement is necessary to conform to a law, a rule, or an ordinance; or

(B) An analysis within the guaranteed energy savings performance contract demonstrates that there is an economic advantage to the governmental unit implementing an improvement as part of the guaranteed energy savings performance contract, and the savings justification for the improvement is documented by industry engineering standards.

(e) A facility alteration which includes expenditures that are required to properly implement other energy conservation measures may be included as part of a guaranteed energy savings performance contract without being included in the savings guarantee. In such case, notwithstanding any other provision of law, the installation of these additional

386 measures may be supervised by the contractor performing the guaranteed energy savings
387 performance contract.

388 (f) The guaranteed energy savings performance contract shall include an agreement for the
389 provision of measurement and verification services to be paid for from the energy and
390 operational cost savings generated by the project for the term of the contract. It may
391 include maintenance services for the measures installed under the contract. The
392 measurement and verification services shall be performed in accordance with industry
393 standard methods for measuring and verifying savings and equipment performance.
394 Savings which are stipulated shall be specifically noted as such in the guaranteed energy
395 savings performance contract.

396 (g) Reporting. Upon execution of a guaranteed energy savings performance contract, the
397 governmental unit shall provide written notice to its utility providers describing the energy
398 conservation measures to be installed. Additionally, the authority shall make publicly
399 available an annual list of all guaranteed energy savings performance contracts that are
400 signed in each calendar year.

401 50-37-5.

402 (a) A governmental unit may use funds designated for operating, utilities, or capital
403 expenditures for any guaranteed energy savings performance contract, including, without
404 limitation, for purchases on an installment payment or lease purchase basis.

405 (b) During the life of the contract, grants, subsidies, or other payments from the state to
406 a governmental unit shall not be reduced as a result of energy savings obtained as a result
407 of a guaranteed energy savings performance contract.

408 50-37-6.

409 Every governmental unit shall periodically review all proposed capital improvement
410 projects for potential applicability of this chapter and shall first consider proceeding with
411 a guaranteed energy savings performance contract under this chapter where appropriate.

412 50-37-7.

413 Requirements for state agencies:

414 (1) The director shall be authorized to promulgate any rules, regulations, stipulations,
415 and policies necessary to carry out the terms and provisions of this Code section
416 regarding contracting and procurement procedures for state agencies. Any rules,
417 regulations, and policies as prescribed by the director shall be published, and state
418 agencies shall be furnished with copies of the same. The director may fix, charge, and

collect reasonable fees for any administrative support and technical assistance or other services provided by the director under this paragraph;

(2) The authority shall provide technical assistance to state agencies contracting for energy conservation measures and engage in other activities considered appropriate by the department for promoting and facilitating guaranteed energy savings performance contracts by state agencies. The director shall develop model contractual and related documents for use by state agencies. Prior to entering into a guaranteed energy savings performance contract, any contract or lease for third-party financing, or any combination of such contracts, a state agency shall submit such proposed contract or lease to the director for review and approval;

(3) With regard to the authority's procedures for awarding multiyear guaranteed energy savings performance contracts, the Georgia State Financing and Investment Commission may establish a total multiyear contract value based upon the Governor's revenue estimate for subsequent fiscal years and other information as the Georgia State Financing and Investment Commission may require. In setting the multiyear guaranteed energy savings performance contract authority, the Georgia State Financing and Investment Commission shall take into consideration the known and anticipated obligations of the state agencies proposing to enter into multiyear guaranteed energy savings performance contracts, including, but not limited to, any multiyear guaranteed energy savings performance contracts the state agencies have entered into previously. The Georgia State Financing and Investment Commission may set a total multiyear contract value authority for the authority each fiscal year and may, during the fiscal year, revise such contract value authority as necessary as determined by the Georgia State Financing and Investment Commission. Any multiyear guaranteed energy savings performance contract entered into by state agencies that is not in compliance with the multiyear contract value authority set by the Georgia State Financing and Investment Commission shall be void and of no effect;

(4) At the beginning of each fiscal year, a governmental unit's appropriations shall be encumbered for the estimated payments for multiyear guaranteed energy savings performance contract work to be performed in the appropriation fiscal year. Payment for multiyear guaranteed energy savings performance contract work performed pursuant to contract in any fiscal year other than the current fiscal year shall be subject to appropriations by the General Assembly. Multiyear guaranteed energy savings performance contracts shall contain a schedule of estimated completion progress, and any acceleration of this progress shall be subject to the approval of the authority, provided funds are available. State agencies shall have the right to terminate without further obligation any multiyear guaranteed energy savings performance contract, provided that

the cancellation is subject to the termination provisions of the multiyear guaranteed energy savings performance contract, if the state agency determines that adequate funds will not be available for all of the payment obligations of the state agency. The state agency's determination regarding the availability of funds for its obligations shall be conclusive and binding on all parties to the contract. In the event of termination of any contract, the contractor shall be given a written notice of termination at least 60 days before completion of scheduled work for which funds are available. In the event of termination, the contractor shall be paid for the work already performed in accordance with the contract specifications;

(5) The provisions of paragraph (6) of this Code section shall be incorporated verbatim in all multiyear guaranteed energy savings performance contracts;

(6) The provisions of this Code section shall not apply to energy efficiency contracts awarded by the authority prior to July 1, 2010. No multiyear guaranteed energy savings performance contracts shall be entered into under the provisions of this Code section until the Georgia State Financing and Investment Commission has established the total multiyear contract value authority for the current and future fiscal years and adopted such fiscal policies regarding multiyear guaranteed energy savings performance contracts authorized under this Code section; and

(7) The authority shall approve any guaranteed energy savings performance contract containing the provisions of subsection (d) of Code Section 50-37-4, regarding improvements not casually connected to an energy conservation measures, or subsection (e) of Code Section 50-37-4, regarding facility alterations required to properly implement other energy conservation measures.

50-37-8.

This chapter, being for the welfare of this state and its inhabitants, shall be liberally construed to effect the purposes specified in this chapter."

SECTION 3.

Section 1 of this Act shall become effective on July 1, 2010. Section 2 of this Act shall become effective on January 1, 2011; provided, however, that Section 2 of this Act shall only become effective on January 1, 2011, upon the ratification of a resolution at the November, 2010, state-wide general election, which resolution amends the Constitution so as to authorize obligations of the state for governmental energy efficiency or conservation improvement projects in which vendors guarantee realization of specified savings or revenue gains attributable solely to the improvements. If such resolution is not so ratified, Section 2

490 of this Act shall not become effective and shall stand repealed in its entirety on January 1,
491 2011.

492 **SECTION 4.**

493 All laws and parts of laws in conflict with this Act are repealed.